

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

CHHOM C.,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI, et al.,

Defendants.

Case No. 23-cv-04741-RMI

**ORDER REMANDING CASE**

Re: Dkt. Nos. 16, 19

Plaintiff seeks judicial review of an administrative law judge (“ALJ”) decision denying his application for disability insurance benefits under Title II of the Social Security Act. *See* Admin. Rec. at 14-24.<sup>2</sup> Plaintiff’s request for review of the ALJ’s unfavorable decision was denied by the Appeals Council (*see id.* at 1-5), thus, the ALJ’s decision is the “final decision” of the Commissioner of Social Security which this court may review. *See* 42 U.S.C. §§ 405(g), 1383(c)(3). Both Parties have consented to the jurisdiction of a magistrate judge (dks. 6, 8), and the matter has been fully briefed (*see* dks. 16, 19, 22). For the reasons stated below, this case is remanded for further proceedings.

**LEGAL STANDARDS**

The Commissioner’s findings “as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C. § 405(g). A district court has a limited scope of review and can only set

<sup>1</sup> Pursuant to the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, Plaintiff’s name is partially redacted.

<sup>2</sup> The Administrative Record (“AR”), which is independently paginated, has been filed in eleven attachments to Docket Entry #9. *See* (dks. 9-1 through 9-11).

1 aside a denial of benefits if it is not supported by substantial evidence or if it is based on legal  
 2 error. *Flaten v. Sec’y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). The phrase  
 3 “substantial evidence” appears throughout administrative law and directs courts in their review of  
 4 factual findings at the agency level. *See Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019).  
 5 Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as  
 6 adequate to support a conclusion.” *Id.* at 1154 (quoting *Consol. Edison Co. v. NLRB*, 305 U.S.  
 7 197, 229 (1938)); *see also Sandgathe v. Chater*, 108 F.3d 978, 979 (9th Cir. 1997). “In  
 8 determining whether the Commissioner’s findings are supported by substantial evidence,” a  
 9 district court must review the administrative record as a whole, considering “both the evidence  
 10 that supports and the evidence that detracts from the Commissioner’s conclusion.” *Reddick v.*  
 11 *Chater*, 157 F.3d 715, 720 (9th Cir. 1998). The Commissioner’s conclusion is upheld where  
 12 evidence is susceptible to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676,  
 13 679 (9th Cir. 2005).

#### 14 SUMMARY OF THE RELEVANT EVIDENCE

15 Plaintiff – now 55 years old – has applied for Title II benefits with an alleged onset date of  
 16 December 15, 2015, and a date last insured of June 30, 2018. *See* AR at 17. The ALJ in this case  
 17 found that Plaintiff’s only severe impairments were essential hypertension, type II diabetes  
 18 mellitus, obesity, and coronary artery disease. *Id.* Plaintiff claims, *inter alia*, that the ALJ erred in  
 19 failing to find Plaintiff’s diagnosed and ongoing back conditions, his chronic pain syndrome, his  
 20 depression, and his diabetic retinopathy severe at Step Two. *See* Pl.’s Br. (dkt. 16) at 14-19.

21 In early 2012, while moving a pallet of bottles with a pallet jack at work, Plaintiff  
 22 experienced a loud popping sensation, followed by pain, in his lower back. AR at 2190. He was  
 23 diagnosed with a herniated lumbar disc, lumbar radiculopathy, and pelvic subluxation – the upshot  
 24 of which was that he would experience persistent lower back pain, particularly on his left side. *Id.*  
 25 at 2189. The lower back pain ranged from moderate to severe; it was intermittent; and it was  
 26 exacerbated by prolonged sitting (*i.e.*, he needed to frequently change positions). *Id.* at 2190. His  
 27 activities of daily living became “sedentary,” such as watching TV and resting, and he gained  
 28 weight quickly. *Id.* His treatment provider at the time noted constant paresthesias and pain

1 radiation from his lower back injury, which restricted the range of motion in his back and knee,  
2 caused abnormal deep tendon reflexes, resulted in tenderness and spasms of the spine and back  
3 muscles, and caused difficulty in heel/toe ambulation. *Id.* at 2191. His lower back was also  
4 observed to be hypersensitive to palpation. *Id.* Because of these injuries, Plaintiff's worker's  
5 compensation claim was approved in May of 2012. *Id.* at 216.

6 As part of the treatment for his lumbar discogenic pain, Sherman Tran, M.D., administered  
7 transforaminal epidural steroid injections to the L4 and L5 regions of Plaintiff's spine in August  
8 2012. *Id.* at 2197. Nevertheless, in December 2012, Plaintiff still had persistent pain (of a level 8  
9 out of 10) in the lower back area, which made sleeping difficult. *Id.* at 2201. Dr. Tran observed  
10 that Plaintiff's residual range of motion was only 25% of the normal range of motion for flexion,  
11 and only 50% for extension. *Id.* at 2202. Pushing, pulling, bending, and reaching over his  
12 shoulder, as well as cold air at night, all exacerbated the pain – and only lying down sideways or  
13 face-down would help to ease the pain. *Id.* at 2206, 2220. Dr. Tran diagnosed Plaintiff with disc  
14 protrusion from L3 to L5 with lumbar radiculopathy and directed him to stay in modified work  
15 status, lifting only up to 5 pounds. AR 2203, 2207.

16 In June 2013, after more than a year, Plaintiff was still suffering moderate to severe  
17 tenderness in his lumbar paraspinal region, and Dr. Tran found that Plaintiff's symptoms and  
18 responses were confirmed by his physical examination findings. *Id.* at 2212, 2213. Dr. Tran now  
19 observed only a 20% normal range of motion in flexion, and only 50% of the normal range of  
20 motion in extension in Plaintiff's back; additionally, an MRI showed disc protrusion from L3 to  
21 L5 in Plaintiff's lower spine. *Id.* at 2216, 2217. Dr. Tran concluded that Plaintiff had reached  
22 "maximal medical improvement"; that his disability status was "permanent and stationary"; and,  
23 that he could only perform modified work, lifting a maximum of 5 pounds. *Id.* at 2217. Dr. Tran  
24 recommended physical therapy, anti-inflammatory agents, epidural injections, and surgical  
25 discectomy and fusion, but noted that Plaintiff was "currently not a candidate for surgery" due to  
26 his diabetes and hypertension. *Id.* at 2218.

27 Between 2014 and 2016, Plaintiff received treatment at the Pacific Pain Institute and  
28 Integrated Pain Management with Toufan Razi, M.D. AR 337-461. Dr. Razi diagnosed Plaintiff

1 with thoracic/lumbosacral neuritis or radiculitis, sprains and strains of lumbar region, skin  
 2 sensation disturbance, and sleep disturbance. *Id.* at 337. In February 2014, Plaintiff was still  
 3 experiencing lower back pain, left lower extremity pain, and cramping and numbness, left hip pain  
 4 (in the order of 8 on a scale of 1 to 10), along with fatigue, irritability, and restlessness. *Id.* at 338,  
 5 346, 352, 360, 369, 372, 375, 381. The continuing pain and cramping steadily interfered with  
 6 Plaintiff's sleep, and the radiating pain was exacerbated by cold weather. *See id.* at 338, 346, 352,  
 7 360, 369, 372, 375, 381, 391, 404, 410, 414, 419, 423, 427, 433, 437, 441, 446, 450, 451. Plaintiff  
 8 reported radiation of pain to his left side (thigh, leg, and foot), as well as his right side (hip, thigh,  
 9 leg, ankle, and foot). *See id.* at 346, 390, 414, 419, 423, 427, 441, 446, 450, 451. Consistent with  
 10 Dr. Tran's previous observations, during the period between 2014 and 2016, Dr. Razi also  
 11 observed a restricted range of motion in Plaintiff's lumbar spine (30 degrees flexion, limited by  
 12 pain, and 10-20 degrees extension, as limited by pain), with the straight leg test positive in both  
 13 legs, and the lumbar facet loading test positive on the left side. *See id.* at 339, 347, 350, 353, 361,  
 14 370, 373, 376, 382, 391, 396, 405, 411, 415 (numbness and lower left extremity weakness), 420,  
 15 424, 428, 434, 438 (back pain, muscle pain, dizziness, numbness, tingling, dizziness, and left  
 16 lower extremity weakness), 442, 447 (left sided antalgic and slowed gait), 452. Plaintiff also  
 17 showed tenderness on the left side and reduced light touch sensation on the left side over the L5-  
 18 S1 dermatomes. *Id.* at 339, 347, 350, 353, 361, 370, 373, 376, 382, 391, 411, 415, 420, 424, 428,  
 19 434, 438, 442, 447, 448, 452. Dr. Razi also diagnosed Plaintiff with radiculopathy and a sprain of  
 20 the ligaments of his lumbar spine in December 2015. *Id.* at 448. Further, Plaintiff was also  
 21 assessed as suffering from some degree of diabetic retinopathy; in this regard, Plaintiff was  
 22 warned that the failure to optimize his blood sugar, cholesterol, and blood pressure may result in  
 23 the loss of his vision. *Id.* at 2418, 2419. Dr. Razi also found that Plaintiff's physical condition  
 24 (rooted in his spine issues) also met the criteria for a chronic pain syndrome diagnosis, given that  
 25 he had suffered a loss of function for more than three months, was excessively dependent on  
 26 healthcare providers, his spouse, and his family, and given also that his current physical capacity  
 27 was "insufficient to pursue work, family, or recreational needs." *Id.* at 340. Plaintiff has also been  
 28 diagnosed with depression (and his treatment providers have noted depressive symptoms) on

1 numerous occasions. *See id.* at 390, 450-51, 1078, 1082, 2648, 2661.

2 At the hearing before the ALJ in October of 2022, Plaintiff confirmed that the above-  
3 described pain has kept him from being able to work. *See id.* at 43-44. He testified that the spinal  
4 injections provided only temporary relief, but that lifting heavy objects, lifting his arm over his  
5 shoulders, walking too much, or sitting down in the same position, all exacerbate the pain  
6 associated with his spinal injury. *Id.* at 45-46. Plaintiff also reiterated at the hearing that only  
7 surgery could possibly ameliorate his condition – however, due to his hypertension, diabetes, and  
8 other health conditions, his doctors have warned him that surgery would be attended with  
9 heightened risks. *Id.* at 46-47. Once again, Plaintiff confirmed that – since the date of his initial  
10 injury (in 2012) until at least the date of the hearing (in 2022), the pain and limitations associated  
11 with standing, walking, and sitting are not only still present – they’ve worsened. *Id.* at 47 (“I still  
12 have the same pain, only it’s worse, like, during the day, where I move . . . and then when you sit  
13 too long and then my lower back disc, it’s squishing, so that’s like [] more pain.”). When asked by  
14 the ALJ what Plaintiff now does throughout the day – Plaintiff described a home-bound, sedentary  
15 existence as such: “I have, like, three pillow[s], and I have in my left, I have - - or my right. So,  
16 when I feel the pain, then instead of sit[ting] down straight, I just lean over that pillow to this side.  
17 And then - - then my problem starts in my leg, then I start to get up, like, walk around the house, []  
18 you know, a little bit here and there, then come back, [and] sit down. Or I have to lie down, face  
19 down with the pillow in my stomach to release the pain from my back, because I cannot, like arch  
20 my back, I have to be straight.” *Id.* at 48. As to the depression, Plaintiff also briefly testified as to  
21 the limitations he experiences as a result of his depression. *See id.* at 53, 56 (mentioning the effects  
22 of the depressive symptoms on his relationship with his wife). However, the ALJ did not  
23 sufficiently develop the record in this regard.

## 24 THE ALJ DECISION

25 The ALJ in this case engaged in the required five step sequential evaluation process. *See*  
26 *id.* at 15-24. At step one, the ALJ determined Plaintiff meets the insured status requirements of the  
27 Social Security Act through his date last insured of June 30, 2018, and that he had not performed  
28 substantial gainful activity since June 30, 2018 – his alleged onset date. *Id.* at 17. At step two, the

ALJ determined Plaintiff's severe impairments are essential hypertension, type II diabetes mellitus, obesity, and coronary artery disease. *Id.* at 17. The ALJ found that Plaintiff's other conditions "were either not of required duration to be considered a severe impairment, asymptomatic and/or controlled with treatment, and/or did not significantly limit the claimant's ability to perform basic work activities . . . to be considered severe impairments." *Id.*

At Step Three the ALJ found that no combination of Plaintiff's conditions met or equaled any listed impairment. *Id.* at 19-20. In formulating Plaintiff's residual functioning capacity ("RFC"), the ALJ determined that Plaintiff could "perform medium work . . . with additional limitations [to the effect that] the claimant was able lift/carry 50 pounds occasionally and 25 pounds frequently, sit, stand, and/or walk six hours in a normal eight-hour workday with normal breaks, frequently climb ramps/stairs, occasionally climb ladders, ropes, and scaffolds, and frequently kneel, crouch and crawl [and] needed to avoid concentrated exposure to pulmonary irritants such as fumes, odors, dusts, gases, and poor ventilation." *Id.* at 20-22.

At Step Four, the ALJ concluded that Plaintiff was incapable of performing his past relevant work. *Id.* at 23. Lastly, at Step Five, based on the testimony of the vocational expert, the ALJ concluded that Plaintiff is capable of making a successful adjustment to other work that exists in significant numbers in the national economy, such as a stores laborer, a dining room attendant, and a kitchen helper. *Id.* at 23-24.

### DISCUSSION

Plaintiff raises five claims in this court – including the claim that the ALJ erred by failing to find Plaintiff's various ongoing back conditions, his chronic pain syndrome, his depression, and his diabetic retinopathy to be severe impairments at Step Two. *See generally* Pl.s' Br. (dkt. 16) at 14-19. The court agrees and finds that the ALJ's failure in this regard: (1) was legal error based on a misapprehension of the standards associated with Step Two determinations; (2) was rooted in the failure to properly develop the record as to these conditions and their limitations during the relevant disability period; and, (2) resulted in a RFC that is not based on substantial evidence – necessitating a remand for further proceedings.

Step Two's evaluation is a *de minimus* test intended to weed out patently groundless

claims and the most minor of impairments. *See Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987); *Edlund v. Massanari*, 253 F.3d 1152, 1158 (9th Cir. 2005) (stating that the step two inquiry is a *de minimis* screening device to dispose of groundless claims) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996)); *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005) (step two is a “*de minimis* threshold”). An impairment is non-severe at Step Two only if the evidence establishes a slight abnormality that has only a minimal effect on an individual’s ability to work. *Smolen*, 80 F.3d at 1290. Given the above-recited description of Plaintiff’s ongoing back conditions, his depression, and his diabetic neuropathy – the court concludes that the ALJ erred in finding these conditions to be subjected to weeding out at Step Two as patently groundless, or as the most minor of impairments. Instead, the court finds that these impairments warrant serious consideration in the development of a full and fair disability record, and in the ultimate formulation of Plaintiff’s RFC. In fact, it appears to the court that the combination of the conditions described above may indeed be disabling – however – due to the ALJ’s failure to properly develop the record in this regard, further proceedings are necessary.

In Social Security cases, the ALJ has a special duty to develop the record fully and fairly and to ensure that the claimant’s interests are considered, even when the claimant is represented by counsel. *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001). The ALJ’s duty to “conduct an appropriate inquiry” is triggered where evidence is ambiguous or – as is the case here – the record is inadequate to allow for proper evaluation of the evidence. *Id.*; *see also Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). “The ALJ may discharge this duty in several ways, including: subpoenaing the claimant’s physicians, submitting questions to the claimant’s physicians, continuing the hearing, or keeping the record open after the hearing to allow supplementation of the record.” *Id.* at 1150 (citing *Tidwell v. Apfel*, 161 F.3d 599, 602 (9th Cir. 1999)).

The above-recited evidence related to Plaintiff’s conditions that were erroneously found to be non-severe at Step Two undoubtedly paints a serious picture – indeed, Plaintiff’s condition can be fairly described as grave. However, the record is undeveloped as to the limitations attending these conditions during the relevant disability period. Accordingly, the court finds that the record



was not adequately developed to allow for a proper evaluation of the evidence recited above. More specifically, the record in this case contains no function reports from Plaintiff or his friends or relatives – such as might detail what physical activities Plaintiff could (or could not) perform during the relevant disability period. Second, the ALJ did not venture to subpoena or communicate with any of Plaintiff’s treatment providers (as set forth in *Tonapetyan*, 242 F.3d at 1150) to secure their opinions as to Plaintiff’s functional limitations during the relevant disability period. Third, the ALJ did not develop Plaintiff’s testimony in this regard at the hearing. On remand, the ALJ is **ORDERED** as follows: (1) to invite Plaintiff and his close relatives or friends to submit detailed function reports addressed to the limitations he may have experienced during the relevant disability period; (2) to conduct a new hearing such as to fully and fairly develop Plaintiff’s testimony about the limitations he experienced as a result of the combination of all of his impairments (including the above-described conditions) during the relevant disability period; and, (3) to subpoena, or submit questions to Plaintiff’s treating physicians regarding their opinions about the limitations Plaintiff experienced during the relevant disability period as a result of his impairments.

Because the additional record development set forth above is necessary, the court declines to address Plaintiff’s remaining arguments. Those issues, if necessary, may be addressed on remand. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline to reach [plaintiff’s] alternative ground for remand.”); *Augustine ex rel. Ramirez v. Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) (“[The] Court need not address the other claims plaintiff raises, none of which would provide plaintiff with any further relief than granted, and all of which can be addressed on remand.”). On remand, the Commissioner is instructed to consider the other issues raised in Plaintiff’s briefing and modify any ensuing ALJ opinion as appropriate in order to reflect that the other issues raised by Plaintiff in this court have been considered and addressed. *Steven M. v. Saul*, 2021 U.S. Dist. LEXIS 52225, \*17 (N.D. Cal. Mar. 19, 2021).

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**CONCLUSION**

Accordingly, this case is **REMANDED** for further proceedings consistent with the holdings and instructions provided herein. A separate judgment shall issue.

**IT IS SO ORDERED.**

Dated: September 23, 2024

A handwritten signature in black ink, appearing to read 'RMILLMAN', is written over a horizontal line.

ROBERT M. ILLMAN  
United States Magistrate Judge